Office - Supreme Court, U.S.
FILED
SEP 21 1984
ALEXANDER L. STEVAS,
CLERK

No. 84-131

In The
Supreme Court of the United States
October Term, 1984

INTAKE WATER COMPANY,
Appellant,

v.

YELLOWSTONE RIVER COMPACT COMMISSION, et al.,
Appellees.

On Appeal from the United States District Court for the District of Montana

MOTION TO DISMISS

DONALD D. MACINTYRE*
TIM D. HALL
Special Assistants Attorney General
Montana Department of Natural Resources and Conservation
32 South Ewing
Helena, Montana 59620
(406) 444-6698
Counsel to Montana Appellees

A. G. MCCLINTOCK, Attorney General*
LAWRENCE J. WOLFE
Senior Assistant Attorney General
123 Capitol Building
Cheyenne, Wyoming 82002
(307) 777-7818
Counsel to Wyoming Appellees

ROBERT O. WEFALD, Attorney General*
JOSEPH J. CICHY
Assistant Attorney General Counsel
State Capitol
Bismarck, North Dakota 58505
(701) 224-2210
Counsel to North Dakota Appellees

*Counsel of Record

COCKLE LAW BRIEF PRINTING CO., (800) 835-7427 Ext. 333

BEST AVAILABLE COPY

TABLE OF CONTENTS

	Pages
Motion to Dismiss	1
Appendix	App. 1

TABLE OF AUTHORITIES

TEXTS:

28 U.S.C. § 1253	1
28 U.S.C. § 2101(a)	2
28 U.S.C. § 2101(b)	1, 2
28 U.S.C. § 2101(c)	2

RULES:

Supreme Court Rule 10.3	2
Supreme Court Rule 11.2	2
Supreme Court Rule 11.4	2
Supreme Court Rule 16.1	1

No. 84-131

In The

Supreme Court of the United States

October Term, 1984

INTAKE WATER COMPANY,

Appellant,

v.

YELLOWSTONE RIVER COMPACT COMMISSION, et al.,

Appellees.

On Appeal from the United States District Court for the District of Montana

MOTION TO DISMISS

The appellees, the individual members of the Yellowstone River Compact Commission, the Montana Attorney General, the State Engineer of North Dakota, and the North Dakota State Water Commission, move this Court pursuant to Sup.Ct.R. 16.1(a) to dismiss the appeal of the Intake Water Company ("Intake") on the grounds that it has not filed a proper and timely notice of appeal.

This case involves a direct appeal to this Court under 28 U.S.C. § 1253, and pursuant to 28 U.S.C. § 2101(b), this "direct appeal . . . shall be taken . . . from the judgment, order, or decree . . . within 60 days if final." The final order in this case was entered April 30, 1983. [See Intake's App. 16a-17a]. Intake's sixty days to appeal thus ran out on June 29, 1984. According to the pertinent part

of Sup.Ct.R. 10.3, "[i]f the appeal is taken from a federal court, the notice of appeal shall be filed with the clerk of that court." The appeal in this case was taken from the United States District Court for the District of Montana, but its docket sheet clearly shows no notice of appeal to this Court was filed after the April 30, 1984, final order was entered. [App. 3]. Intake has appealed only to the Ninth Circuit Court of Appeals [see Intake's App. 18a-19a], but not to this Court.

According to Sup.Ct.R. 11.2, the appeal in this matter "shall be in time when the notice of appeal prescribed by Rule 10 is filed with the clerk of the appropriate court within the time allowed by law for taking such appeal and the case is docketed within the time provided in Rule 12. See 28 U.S.C. §§ 2101(a), (b), and (c)." Intake's time to appeal within the time allowed by law, 60 days from April 30, 1984, under 28 U.S.C. § 2101(b), has obviously run.[1]

Since Intake's time to appeal has run, and because Sup.Ct.R. 11.4 states that the "time for filing a notice of appeal may not be extended," Intake's appeal to this Court must be dismissed.

---

[1] Although Intake filed a jurisdictional statement in this case on July 22, 1984, the Clerk, pursuant to Sup.Ct.R. 12.1, should have refused to file it since "the notice of appeal has obviously not been timely filed."

Respectfully submitted,

DONALD D. MACINTYRE
Counsel of Record
TIM D. HALL
Special Assistants Attorney General
Montana Department of Natural
Resources and Conservation
32 South Ewing
Helena, Montana 59620
(406) 444-6698
Counsel to Montana Appellees

A. G. MCCLINTOCK, Attorney General
Counsel of Record
LAWRENCE J. WOLFE
Senior Assistant Attorney General
123 Capitol Building
Cheyenne, Wyoming 82002
(307) 777-7818
Counsel to Wyoming Appellees

ROBERT O. WEFALD, Attorney General
Counsel of Record
JOSEPH J. CICHY
Assistant to Attorney General Counsel
900 East Boulevard
State Office Building
Bismarck, North Dakota 58505
(701) 224-2210
Counsel to North Dakota Appellees

APPENDIX

CIVIL DOCKET SHEET (last two pages)

INTAKE WATER CO.,

Plaintiff,

v.

YELLOWSTONE RIVER COMPACT COMMMISSION,

Defendant.

DOCKET NO. 1184

DATE	NR.	PROCEEDINGS
10-25-83	109	Filed MEMORANDUM OPINION. Copies mailed to counsel of record; handed to USA & Solicitor's Office, Blgs.
10-25-83	110	Filed ORDER that defts' mot. to dism. pltf's second amended complt is granted. The Clerk of Crt is directed to enter judgment for the defts & against the pltf. Copies mailed to counsel of record; handed to USA & Solicitor's Office, Blgs.
10-25-83 Vol. XVIII #1204	111	Filed & Entered JUDGMENT that defts' mot. to dism. pltf's second amended complt is granted; & that judgment is entered for the defts & against the pltf. Copies mailed to counsel of record; handed to USA & Solicitor's Office, Blgs. Copy of judgments mailed to Judge Goodwin & Judge Hatfield; copies of the Memo. Opinion & Order mailed to the judges by Dorothy Craig, Judge Battin's secretary.
11- 4-83	112	Filed Pltf's Motion to alter, amend and/or vacate Judgment w/cert of svc at'd.
11- 7-83	113	Filed Pltf's Motion for Additional Time to File Brf in Sup of Mot to Alter, Amend and/or vacate judgment w/cert of svc thron.
11- 7-83		Lodged Proposed Order purs to mot for additional time. Delvd to JFB.

11-14-83 114 Filed ORDER Granting Mot. for Addt'l Time to File Brf in Support of Mot. to Alter, Amend, &/or Vacate Judgment that Pltf may have to & incl. Dec. 5, 1983 to serve & file a brf in supt of its Mot. to Alter, Amend &/or Vacate Judgment. Copies mailed to counsel of record; handed to USA & Solicitor's Office, Blgs.

12- 6-83 115 Filed Pltf's Initial Brf in Sprt of Pltf's Mot to Alter, Amend &/or Vacate Judgment w/ crt of srv. at'd. mailed cpys to Judge Hatfield & Goodwin.

12- 9-83 116 Filed Motion for Ext of Time of defts Fritz and Greely w/cert of svc at'd

12- 9-83 Lodged Proposed Order purs. to Mot for Ext. Delvd to JFB.

12-13-83 117 Filed ORDER that the defts are granted an ext of time up to and including Jan 20, 1984, to file their answer brfs to "Pltf's Initial Brf in Sup of Pltf's Mot to Alter, Amend and/or vacate Judgment." Cpys mailed to co of rec and Judges Hatfield and Goodwin.

1-19-84 118 Filed Defts' Initial Brf in Oppo to pltf's Mot to Alter, amend and/or Vacate Judgmt w/ crt of svc at'd.

1-20-84 119 Filed Defts Atty General Mike Greely and Yellowstone Compact Commissioner, Gary Fritz's brf in oppo to pltf's motion to alter, amend and/or vacate judgment w/crt of svc at'd.

1-20-84 120 Filed Brf of Deft Christopulos in Oppo to pltf's Motion to alter, amend and/or vacate judgment w/crt of svc at'd.

1-31-84 121 Filed Pltf's Motion for Addt'l Time to File Brf in reply to Brfs in oppo to Motion to Alter, Amend and/or Vacate judgmt w/crt of svc thrn.

1-31-84 Lodged proposed ORDER purs to ext of time to file brf. Delvd to JFB.

2- 1-84 122 Filed ORDER Granting Mot. for Addt'l Time to File Brf in Reply to Brfs in Opp. to Mot. to Alter, Amend &/or Vacate Judgment that Pltf may have to & incl. Feb. 21, 1984 to serve & file a Reply Brf in Spt of its Mot. to Alter, Amend &/or Vacate Judgment. Copies mailed to counsel of record; handed to USA & Solicitor's Office, Blgs.

2-22-84 123 Filed Pltf's Brf in Reply to Defts' Brfs in Opp. to Pltf's Mot. to Alter, AMEND &/or vacate Judgment w/Appl. for hearing & oral Arg. & w/crt of srv at'd. Mailed cpys Judge Hatfield & Goodwin.

2-27-84 124 Filed Deft Montana's Not of Opp. to Oral Arg on Pltf's Mot to Alter, Amend or Vacate Judgment w/crt of srv at'd.

2-29-84 125 Filed Deft Christopulos, Wyo St Eng's Resistance to Pltf's Application for Hearing and Oral Argumt w/crt of svc at'd.

3- 2-84 126 Filed Defts. Vernon Fahy, ND State Engineer, & ND State Water Comm., Notice of Opp. to Oral Arguments w/Aff. of serv. att'd.

3- 7-84 127 Filed Pltf's Resp to Defts oppo and resistance to pltf's application for hearing and oral argument on motion w/crt of svc thrn.

3-20-84 Mailed copies of documents Nos. 118, 119, 120, 124, 125, 126 and 127 to Judge Goodwin & Judge Hatfield.

4-30-84 128 Filed ORDER that pltf's mot to reconsider and for oral argumt is denied. Cpys sent to co of rec and Hatfield and Goodwin.

5-29-84 129 Filed NOTICE OF APPEAL on behalf of Intake Water. Mailed to C/A: Cert cpys of

N/A docket sheets & Docket fee not. form. Fee pd $70. Mailed to all co. of rec: Cpys of N/A docket sheets, Not to ptys in CV appeals & in add. to aplnt, Transcript Order form & cover letter.